

- Diana Trevino — Hidalgo County, Texas; and
- Jeff and Diane Walker — Montgomery County, Texas.

II. SPECIAL EXCEPTIONS

Subject to the foregoing Motion to Transfer Venue and without waiving same, Ocwen specially excepts to the following allegations contained in Plaintiffs' Original Petition pursuant to Texas Rules of Civil Procedure 90 and 91:

1. Ocwen specially excepts to Plaintiffs' Original Petition because Plaintiffs failed to plead the maximum amount of damages claimed. The Court "shall require the pleader to amend so as to specify the maximum amount claimed" upon exception. TEX. R. CIV. P. 47.

2. Ocwen specially excepts to Plaintiffs' negligence and gross negligence, intentional infliction of emotional distress and breach of fiduciary duty claims because Plaintiffs have not pleaded damages that are separate and apart from breach of contract damages. When the only loss or damage is to the subject matter of the contract, the plaintiff's action is ordinarily on the contract." *Southwestern Bell Tel. Co. v. DeLanney*, 809 S.W.2d 493, 494 (Tex. 1991). There are no circumstances that could give rise to claims for negligence and gross negligence, intentional infliction of emotional distress and breach of fiduciary duty because Plaintiffs' remedies and the duties of the parties arise from and are governed by contract, and thus Plaintiffs' negligence and gross negligence, intentional infliction of emotional distress and breach of fiduciary duty claims cannot succeed and fail as a matter of law.

3. Ocwen specially excepts to Plaintiffs' intentional infliction of emotional distress claim because Plaintiffs have failed to plead with sufficiency the facts and elements necessary to support such a claim. In order to recover under a claim for intentional infliction of emotional distress, a plaintiff must show that (1) the defendant acted intentionally or recklessly; (2) the emotional distress suffered by the plaintiff was severe; (3) the defendant's conduct was extreme

and outrageous; (4) the defendant's conduct proximately caused the plaintiff's emotional distress; and (5) there is no alternative cause of action that would provide a remedy for the severe emotional distress caused by the defendant. See *Hoffman-La Roche, Inc. v. Zeltwanger*, 144 S.W.3d 438, 445 (Tex. 2004); *Tiller v. McLure*, 121 S.W.3d 709, 713 (Tex. 2003). Not only have Plaintiffs failed to allege these elements, they have failed to set forth any supporting facts. For example, Plaintiffs do not allege that no other cause of action provides a possible remedy for their alleged emotional distress. In fact, Plaintiffs seek recovery for their alleged "mental anguish" and "emotional stress" via their unreasonable debt collection practices and TDCPA claims as well. Plaintiffs have failed to plead all elements necessary to support an intentional infliction of emotional distress claim. Without this elemental and factual information, Ocwen does not have sufficient notice of the claims raised against it in order to prepare a proper defense. Therefore, Plaintiffs should be required to replead, and, in the event that they fail to adequately do so, their intentional infliction of emotional distress claim should be stricken. Further, there are no circumstances that could give rise to a claim for intentional infliction of emotional distress because, among other things, Plaintiffs have alternative causes of action that provide a basis of recovery for their alleged emotional stress, and thus Plaintiffs' claim for intentional infliction of emotional distress cannot succeed and fails as a matter of law.

4. Ocwen specially excepts to Plaintiffs' breach of fiduciary duty claim because there is no special relationship or any other facts - pleaded or otherwise - that would support the imposition of a fiduciary duty on Ocwen. There are no circumstances that could give rise to a claim for breach of fiduciary duty, and thus Plaintiffs' claim for breach of fiduciary duty cannot succeed and fails as a matter of law.

5. Ocwen specially excepts to Plaintiffs' wrongful foreclosure claim because Plaintiffs have failed to plead with sufficiency the facts and elements necessary to support such a claim. A claim for wrongful foreclosure requires that a foreclosure actually occurred. *See Wieler v. United Sav. Assn of Texas*, 887 S.W.2d 155, 158 (Tex. App.-Texarkana 1994, writ denied). Wrongful foreclosure requires that a plaintiff prove that irregularities in the foreclosure sale caused the property to be sold for a grossly inadequate price. *American Sav. & Loan Ass'n of Houston v. Musick*, 531 S.W.2d 581, 587 (Tex. 1976); *Weiler*, 887 S.W.2d at 158. Plaintiffs did not allege this element. Without this elemental and factual information, Ocwen does not have sufficient notice of the claims raised against it in order to prepare a proper defense. Therefore, Plaintiffs should be required to replead, and, in the event that they fail to adequately do so, their wrongful foreclosure claim should be stricken.

6. Ocwen specially excepts to Plaintiffs' unreasonable debt collections practices under Texas common law claim because Plaintiffs fail to state a cause of action upon which relief may be granted. Plaintiffs have failed to plead with sufficiency the facts and elements necessary to support such a claim. *Woodrum v. Bradley*, 1990 Tex. App. LEXIS 2497, *10 (Tex. Civ. App. – Houston, Oct. 11, 1990, writ denied) (“Unreasonable collection efforts are defined as efforts that amount to a course of harassment that was willful, wanton, malicious, and intended to inflict mental anguish and bodily harm.”) Accordingly, their claim for common law unreasonable debt collections practices should be struck.

7. Ocwen specially excepts to Plaintiffs' Texas Debt Collection Practices Act, TEX. FIN. CODE §§ 392.001, *et seq.* (“TDCPA”), claim because Plaintiffs have failed to plead with sufficiency the facts and elements necessary to support such a claim. Ocwen also specially excepts to Plaintiffs' TDCPA claim because Ocwen is not a “debt collector” under the TDCPA.

There are no circumstances that could give rise to a claim under the TDCPA, and thus Plaintiffs' TDCPA claim cannot succeed and fails as a matter of law.

8. Ocwen specially excepts to Plaintiffs' Texas Deceptive Trade Practices Act ("DTPA") claim because Plaintiffs have failed to plead with sufficiency the facts and elements necessary to support such a claim. In order to establish a violation of the DTPA, Plaintiffs must demonstrate (a) that they are "consumers"; (b) that Ocwen can be sued under the Act; (c) that Ocwen committed a false, misleading, or deceptive act or practice, and (d) that Ocwen's actions were a producing cause of Plaintiffs' damages. *See* TEX. BUS. & COM. CODE §§ 17.41-17.63. Plaintiffs, however, have failed to plead any facts demonstrating (1) that they are consumers under the DTPA, (2) that Ocwen committed a false, misleading, or deceptive act, and/or (3) how Ocwen's alleged actions were both a cause in-fact and a substantial factor in causing Plaintiffs' alleged damages. For example, Plaintiffs conclusively allege that "[t]he conduct of Defendants violates the DTPA." But Plaintiffs never articulate the specific actions that give rise to their DTPA claim, nor do they even allege that Defendants' actions constitute "false, misleading or deceptive practices." Without this information, Ocwen does not have sufficient notice of the claims raised against it in order to prepare a proper defense. Therefore, Plaintiffs should be required to replead, and, in the event that they fail to adequately do so, their DTPA claim should be stricken.

9. Ocwen specially excepts to Plaintiffs' DTPA claim because they are not "consumers" under the DTPA and because the subject matter of the transaction is not goods or services as required by the DTPA. *See La Sara Grain Co. v. First Nat'l Bank*, 673 S.W.2d 558, 566 (Tex. 1984) (concluding that because the lending of money is neither a good nor a service, a person who seeks only to borrow money is not a consumer under the DTPA). There are no

circumstances that could give rise to a claim under the DTPA, and thus Plaintiffs' DTPA claim cannot succeed and fails as a matter of law.

III. GENERAL DENIAL

Subject to the foregoing Motion to Transfer Venue and without waiving same, Ocwen, pursuant to Rule 92 of the Texas Rules of Civil Procedure, generally denies each and every allegation contained in Plaintiffs' Original Petition and demands strict proof thereof.

IV. AFFIRMATIVE DEFENSES

Subject to the foregoing Motion to Transfer Venue and without waiving same, Ocwen pleads the following affirmative defenses:

1. Plaintiffs' claims are barred because one or more of the material obligations of the notes and security instruments have not been satisfied.
2. Plaintiffs' claims are barred by the equitable doctrine of waiver.
3. Plaintiffs' claims are barred by the waiver provisions contained in the security instruments at issue in this lawsuit.
4. Plaintiffs' claims are barred by the doctrine of *de minimus non curat lex*.
5. Plaintiffs' claims are barred by the doctrines of unclean hands and *in pari delicto*.
6. Plaintiffs' claims are barred by the doctrine of unjust enrichment.
7. Plaintiffs' claims are barred by the doctrine of accord and satisfaction.
8. Plaintiffs' claims are barred by the election of rights doctrine.
9. Plaintiffs' claims are barred by the applicable statute of limitations.
10. Any allegedly wrongful acts or omissions of Ocwen, if and to the extent such acts and omissions occurred, were legally excused or justified.
11. Plaintiffs' claims are barred by the "one satisfaction" doctrine.

12. Plaintiffs' claims are barred to the extent that they were contributorily and/or comparatively at fault for their damages. Among other things, Plaintiffs' own acts or omissions caused and/or contributed to their alleged damages.

13. Plaintiffs have failed to mitigate or minimize their damages.

14. Plaintiffs' claim for intentional infliction of emotional distress is barred because an alternative cause of action exists that would provide a remedy for Plaintiffs' alleged emotional distress.

15. Plaintiffs' prayer for rescission is barred by the United States and Texas Constitutions, including without limitation the Due Process Clause and the prohibitions on cruel and unusual punishments and excessive fines set forth in those Constitutions.

16. Ocwen claims all offsets and credits available under Chapter 33 of the Texas Civil Practice and Remedies Code.

17. Ocwen denies that all conditions precedent to a right of recovery have been satisfied.

18. Plaintiffs are not entitled to punitive damages, and any and all excessive amounts of punitive damages sought herein violate Chapter 41 of the Texas Civil Practice and Remedies Code, the Texas Constitution and the Constitution of the United States of America, all of which set limits on punitive damages.

19. Plaintiffs' claims are barred, in whole or in part, by the doctrines of judicial estoppel, res judicata, and collateral estoppel.

20. The Home Owners Loan Act of 1933 ("HOLA"), 12 U.S.C. § 1461 *et seq.*, and its implementing rules and regulations (e.g., 12 C.F.R. § 560.2) preempts Plaintiffs' claims in whole or in part. In particular, same preempts:

- a. the application of state laws to loan-related fees, including, without limitation, initial charges, late charges, pre-payment penalties, servicing fees and over-limit fees;
- b. processing, originating, servicing, sale or purchase of, or investment or participation in, mortgages;
- c. terms of credit; and
- d. state laws whose effect on the lending operations of Ocwen Federal Bank FSB were more than incidental.

V. PRAYER

WHEREFORE, Ocwen requests that this Court grant its Motion to Transfer Venue and dismiss all Plaintiffs and claims other than claims by Plaintiff Virginia Rosas, or alternatively, sever and transfer the claims to counties of proper venue. With respect to Plaintiff Virginia Rosas' claims, Ocwen requests that the Court deny each and every claim, cause of action and request for damages asserted against it; that Ocwen be dismissed from this action; that Ocwen recover its attorneys' fees and costs of court; and that Ocwen be granted any other legal or equitable relief to which it may be entitled.

Subject to and without waiving the foregoing Motion to Transfer Venue, Ocwen requests that this Court deny each and every claim, cause of action and request for damages asserted against it; that Ocwen be dismissed from this action; that Ocwen recover its attorneys' fees and costs of court; and that Ocwen be granted any other legal or equitable relief to which it may be entitled.

Respectfully submitted,

By: /s/Mark D. Cronenwett

MARK D. CRONENWETT

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**ATTORNEYS FOR DEFENDANT
OCWEN LOAN SERVICING, LLC,
SUCCESSOR IN INTEREST TO
OCWEN FEDERAL BANK FSB**

CERTIFICATE OF SERVICE

The undersigned certifies that on the 26th day of October 2007, a true and correct copy of the foregoing document was delivered via certified mail, return receipt requested to the counsel of record listed below:

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/s/ Lindsay L. Stansberry
LINDSAY L. STANSBERRY

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

VIRGINIA ROSAS, ARMANDO AND)	
MARIA CASTENEDA, LARRY)	
COFFMAN, PATSY GOMEZ,)	
DYLISALY HANDY, MICHAEL)	
HARLAN, ARTHUR AND KATHY)	
LAFOUR, MICHAEL AND TAMENNA)	
NICHOLS, LASANDRA AND CORNELL)	
APPLIN, STELLA SALAS, MARCILIA)	
SALAZAR, KEITH AND ESTER)	
SIMPSON, CURTIS AND ELIZABETH)	
SONNTAG, DIANA TREVINO, AND)	
JEFF AND DIANA WALKER,)	
)	
Plaintiffs,)	
v.)	Case No.
)	
OCWEN LOAN SERVICING, LLC, AS)	
SUCCESSOR BY MERGER WITH)	
OCWEN FEDERAL BANK, FSB,)	
)	
Defendant.)	

DECLARATION OF CHOMIE NEIL

I, Chomie Neil, do hereby declare under penalty of perjury that the following is true and correct:

1. I am currently employed by Ocwen Loan Servicing, LLC ("Ocwen Loan Servicing"), successor in interest to Ocwen Federal Bank FSB ("Ocwen Federal Bank"), as a Senior Loan Analyst. I held the position of research specialist from 1999 until July 2005 with Ocwen Federal Bank and held this position at Ocwen Loan Servicing until being promoted to Senior Loan Analyst in May 2006. I have reviewed the complaint in the above-entitled action.

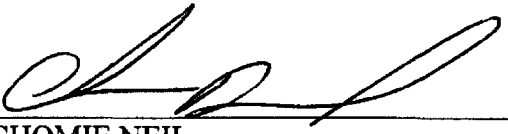
As a result of my employment with Ocwen, and my review of the loan history, I have personal knowledge of the facts set forth in this affidavit.

2. Ocwen Federal Bank FSB was a federally chartered thrift incorporated under the laws of the United States. Effective June 30, 2005, Ocwen Federal Bank FSB was dissolved and its mortgage loan servicing business was transferred to Ocwen Loan Servicing, LLC.

3. Ocwen Loan Servicing, LLC is a limited liability company. The sole member of Ocwen Loan Servicing, LLC is Ocwen Financial Corp. Ocwen Financial Corp. is a Florida corporation headquartered in Florida.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 31st, 2007



CHOMIE NEIL

JS 44 (Rev 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Virginia Rosas, Armando & Maria Casteneda, Larry Coffman, Patsy Gomez, Dylisaly Handy, Michael Harlan, Arthur & Kathy LaFour, et al.

(b) County of Residence of First Listed Plaintiff Nueces
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert C. Hilliard, HILLIARD & MUNOZ, L.L.P., 719 S. Shoreline Blvd., Suite 500, Corpus Christi, TX 78401, 361 882-1612 et al.

DEFENDANTS

Ocwen Loan Servicing, LLC

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

Mark D. Cronenwett, Cowles & Thompson, PC, 901 Main ST, Ste. 4000, Dallas, TX 75202, 214.672.2000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Product Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input checked="" type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332a

Brief description of cause:
Borrowers on home equity and mortgage loans dispute actions by the servicer of the loans.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions).

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/30/2007

Mark D. Cronenwett w/perm. by US

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____